IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 50 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAINBOW INDUSTRIES PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 50 of 1993
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 23/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following question of law has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench under Section 256(1) Of the Income Tax Act, 1961 (the Act), at the instance of the Commissioner of Income Tax, Baroda.

"Whether the Appellate Tribunal is right in law and on facts in deleting the interest levied u/s 215 of the Act when the additions made by the assessing officer were confirmed by the Tribunal and the advance tax paid by the assessee was less than 75% of the assessed tax?"

2. The assessment year is 1980-81 and the relevant accounting period is the previous year ended on 31st March 1980. The assessee company had filed an estimate of advance tax showing an income of Rs.2,00,000/(Rupees Two Lacs Only) and estimated the advance tax payable at Rs.1,18,150/- (Rupees One Lac Eighteen Thousand One Hundred Fifty Only). In the assessment order framed under Section 143(3) read with Section 144B of the Act, the Income Tax Officer computed the total income at Rs.3,43,360/- (Rupees Three Lacs Forty Three Thousand Three Hundred Sixty Only) on 23rd September 1988. The Income Tax Officer also directed charging of interest under Section 215 of the Act.

3. One of the principal additions in the assessment year pertained to valuation of closing stock amounting to Rs.1,78,000/-. The assessee carried the matter in appeal before CIT (Appeals). In relation to the challenge to the addition of Rs.1,78,000/-, the CIT (Appeals) after giving relief by way of considering the opening stock, reduced the addition to Rs.31,655/-. However, the assessee did not succeed in its challenge to levy of interest under Section 215 of the Act.

4. The assessee carried the matter in Second Appeal before the Tribunal. Vide its order dated 31st January 1992, the Tribunal upheld the addition in principle as to valuation of closing stock. However, in relation to levy of interest under Section 215 of the Act, the Tribunal held that the same was wrongly charged and it was not proper to saddle the assessee with such additional liability.

5. Mr.M.R.Bhatt, the learned senior standing counsel appears on behalf of the applicant Revenue and has been

heard. Though served, there is no appearance on behalf of the respondent assessee.

6. Mr.Bhatt assailed the impugned order of the Tribunal stating that provisions of Section 215(1) of the Act stipulate that the Assessing Officer is obliged to charge interest once the assessed income is more than the stipulated percentage. In other words, according to the learned counsel, once the difference between the estimated income and the assessed income exceeded the statutory percentage, which is the permissible difference, the Assessing Officer was under a mandate to levy interest. Therefore, according to Mr.Bhatt, the Tribunal was in error in deleting the interest levied under Section 215 of the Act.

7. Under Section 211 of the Act, legislature has provided, dates during the financial year on which advance tax becomes payable in equal installments. Under Section 209A of the Act computation and payment of advance tax by an assessee are provided for. However, actual computation of advance tax viz. the basis on which an assessee is required to estimate the advance tax payable by him, is laid down in Section 209 of the Act. In each financial year, once an assessee finds that the current income is likely to exceed the limit specified in Section 208(2) of the Act, an assessee is obliged to forward an estimate of his current income and the advance tax payable on such current income. While computing the advance tax payable under Section 209 of the Act, an assessee is required to take into consideration his total income of the latest previous year in respect of which, the assessee has been assessed by way of regular assessment; the assessee is also required to ascertain the total income as shown in the return of income of the latest previous year for a year which is later in point of time to the assessment year for which assessment is framed and consider the basis on which tax has been paid by the assessee under Section 140A of the Act for such year. Thereafter, the assessee is required to ascertain which of the two figures exceeds the other viz. whether the latest assessed income is higher than the latest returned income or other way round and taking that as a base, an assessee is required to work out the current income and the liability to pay advance tax.

8. If the aforesaid scheme is borne in mind, it is apparent that unless and untill the revenue is in a position to state that either of the figures adopted for the purposes of computing the current income and the advance tax payable is incorrect in any manner

whatsoever, it will not be possible to accept the contention of the revenue that levy of interest under Section 215 of the Act being mandatory in nature, nothing further is required to be seen. In the case at hand, the Tribunal has found as a matter of fact that the assessee was valuing the closing stock on the same basis in the past and for this year also, the same method had been adopted. The Tribunal, therefore, concluded that an addition of this nature and of this magnitude could not have been anticipated by the assessee at the time when it filed its estimate of advance tax payable by it. Nothing has been brought on record to rebut the aforesaid finding of fact viz. the method of valuation of closing stock being identical in past years. In the circumstances, it is not possible to state in light of the scheme of computation of payment of advance tax that the assessee had committed any default by virtue of which, the assessee became liable to be charged interest under Section 215 of the Act.

9. In the result, it is held that the Tribunal was right in law in deleting the interest levied under Section 215 of the Act, even when the additions made by the Assessing Officer were confirmed by the Tribunal and the advance tax paid by the assessee was less than 75% of the assessed tax. The question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

10 The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J.) (H.N.Devani, J.)

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